

Services Guide

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services



California Multiple Award Schedules

Procurement Division • Department of General Services
State of California

CALIFORNIA MULTIPLE AWARD SCHEDULE

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CMAS SERVICES GUIDE

SECTION 1 - OVERVIEW

Purpose	<p>This packet provides guidelines for procuring services on the CMAS program.</p> <p>This guide does not eliminate or override statutory requirements. It is intended to augment information provided in the State Contracting Manual (SCM) and Purchasing Authority Manual (PAM).</p>
Legislative Overview	<p>The CMAS program was established in May 1994 (Public Contract Code Sections 10290 et seq. and 12101.5(b)) and included all goods and information technology products and services only. It was expanded in January 2001 (Revised Public Contract Code Sections 10290, 10290.1 and 12101.5(b)) to include non-information technology services.</p>
CMAS is Optional	<p>Subject to the Department of General Services delegated purchasing authority guidelines, agencies may bid or use leveraged procurement contracts like CMAS to meet their procurement needs.</p>
Outsourcing Services	<p>Careful analysis must be given by state agencies to using contracted personnel rather than using civil service positions within state government.</p> <p>The State Constitution generally requires contracting to be limited to those services that cannot be performed by civil service employees except as provided for in Government Code 19130.</p> <p>See ATTACHMENT A of this packet for guidelines.</p>
Conflict of Interest	<p>Agencies must develop a plan to evaluate the proposed purchase order for any potential conflict of interest issues.</p> <p>See ATTACHMENT B of this packet for guidelines.</p>
What are Personal and Consulting Services?	<p><u>Personal Services</u> – Purchase orders for services that have someone doing something, e.g., cleaning services, graphic design services.</p> <p><u>Consulting Services</u> – Purchase orders for services of an advisory nature that provide a recommended course of action or personal expertise (product of the mind).</p>
Program Exclusions	<p><u>Architectural, Construction, Engineering, and Environmental Services</u></p> <p>Services are not allowed on CMAS that are required by law to be performed by a licensed architect, licensed registered engineer, licensed landscape architect, construction project manager, licensed land surveyor, or environmental services</p>

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SECTION 1 - OVERVIEW, Continued

Program Exclusions (continued)

as defined in Government Code 4525. If you have questions about these types of transactions, the Department of General Services (DGS), Real Estate Services Division (RESA) can be contacted at 916/376-1748.

Financial Audits

Government Code 8546.4(e) requires prior written approval from the State Controller and the Director of Finance for state agencies entering into contracts for financial auditing services. The approval shall state the reason for the contract and shall be filed with the State Auditor at least 30 days prior to the award of the contract.

Legal Services

Contracting for legal services by state agencies is controlled by statutes (Government Code Section 11040) that require Attorney General approval prior to entering into contracts with outside counsel. Additionally, Article VII of the California Constitution requires that state legal work be performed by state employees, absent limited exceptions (Government Code Section 19130). There are also policy-based approval requirements for all Executive Branch agencies that control the use of private counsel.

Public Works

Does the work involve erection, construction, alteration, repair or improvement of a public structure as defined in Public Contract Code Section 1101.

See the State Contracting Manual, Section 10 and 11 for information on Public Works Projects.

The Department of General Services (DGS) Real Estate Services Division (RESA) should be contacted for information on these types of transactions. For Architectural and Engineering, contact 916/376-1748. For Public Works, contact 916/376-1768.

Facility Planning, Registered Nursing, and Security Guard Services

By CMAS policy, the services shown above are not permitted on CMAS contracts.

Procurement Division Training

The Procurement Division provides agency training through the California Procurement & Contracting Academy (CAL-PCA). Class schedules are available on the CAL-PCA web site at www.dgs.ca.gov/pd or at 916/375-4500.

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SECTION 2 – ADMINISTRATIVE REQUIREMENTS

Statement of Work

All purchase orders for service must include a Statement of Work (SOW). The level of success depends on fully assessing and defining agency needs in the SOW. To be successful, agencies must:

- Determine the level of quality sufficient to meet their needs and guarantee the desired outcome.
- Identify the capabilities and qualifications required of a contractor to accomplish the required outcome.

For Instructions for Preparing a Statement of Work, Questions for Developing a Statement of Work, and Statement of Work samples, go to: www.dgs.ca.gov/pd, then select “CMAS”, then select “State Agencies”, then select “Statement of Work Information”.

Insurance Requirements

Insurance is required for hazardous activities. State agency transactions for hazardous activities costing \$100 or more must be submitted to the Department of General Services (DGS) Office of Risk and Insurance Management (ORIM) (916/376-5300). See State Contracting Manual, Section 3, Hazardous Activities Contracts.

DGS/ORIM is available to provide consultation on all insurance and liability matters.

Progress Payments

A progress payment is a partial payment for a portion or segment of the work needed to complete a task.

If a purchase order consists of the performance of separate and distinct tasks, then any funds withheld for a particular task may be paid upon completion of that task (Public Contract Code Section 10346). To determine whether a particular task is separate and distinct, you must decide if later tasks build on it.

a. Special Goods and Information Technology Products and/or Services

Any contract for goods (Public Contract Code 10314) or for information technology services (Public Contract Code Section 12112), to be manufactured or performed by the Contractor especially for the State and not suitable for sale to others in the ordinary course of the Contractor's business may provide, on such terms and conditions as the department deems necessary to protect the State's interests, for progress payments for work performed and costs incurred at the Contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the Contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the Contractor.

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CMAS SERVICES GUIDE

SECTION 2 – ADMINISTRATIVE REQUIREMENTS, Continued

Progress Payments (continued)

b. Non-Information Technology Services

Any contract for non-information technology services (Public Contract Code Section 10346) may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task.

Recommended policy for state agencies:

- Discourage progress payments whenever possible.
- Do not allow progress payments on purchase orders for less than three months.
- If progress payments are to be made, they should be made not more frequently than monthly in arrears or at clearly identifiable stages of progress, based upon written progress reports submitted with the Contractor's invoices.
- Progress payments shall not be made in advance of services rendered.
- Purchase orders may require a ten percent (10%) withhold of each progress payment pending satisfactory completion of the purchase order or a separate and distinct task.

Advance Payments

It is NOT acceptable to pay for services in advance except software maintenance and license fees that are considered a subscription and may be paid in advance if a provision addressing payment in advance is included in the purchase order.

Warranty upgrades and extensions may also be paid for in advance, one time.

Advance payment for services is allowed by Government Code Section 11019 only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency.

Contract Manager

The contract manager is a person designated by the ordering department to monitor the Contractor's performance to ensure compliance with all purchase order provisions (usually a program staff member familiar with the requirements of the purchase order). Duty may or may not include authority to sign purchase orders.

The contract manager serves as a liaison with the Contractor and may perform administrative tasks ranging from the request of services through the performance and final payment for completed services.

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SECTION 2 – ADMINISTRATIVE REQUIREMENTS, Continued

Contract Manager (continued)

See Section 9 of the State Contracting Manual for the following guidelines

- Responsibilities of the Contract (Purchase Order) Manager
 - Contract (Purchase Order) Manager “Don’ts”
 - Ethics
 - Record Keeping
 - Performance of the Contractor Termination of the Contract (Purchase Order)
 - Closing of Service Contracts (Purchase Order)
 - Retention of Contract (Purchase Order) Records
-

Contractor Travel

If the CMAS contract provides for travel, state agencies may pay travel and per diem expenses according to state travel time and per diem rules (represented employee rates) with verified receipts.

Notwithstanding the contract provisions, the State will not be responsible for the cost of travel to bring contractor personnel to the agency site to commence work. However, if requested by the ordering agency, the agency will be responsible for the cost of travel from one California agency site to another.

Local government agency, education and special districts will pay travel time and per diem according to their respective statutory requirements.

All travel and per diem expenses must be within CMAS contract parameters, and incorporated into the agency purchase order.

It is important that the agency and contractor discuss necessary travel requirements prior to issuing the purchase order because the detail and cost (only as allowed for in the contract) must be included in the agency purchase order to be payable.

Bond Requirements

Public Works: Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Std. Form 807, when the purchase order involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the contract price. Forms shall be provided to the Contractor. See the General Terms and Conditions, CMAS Public Works Requirements.

Progress Payments: Special contracts for goods and information technology products and/or services not suitable for sale to others; progress payments; performance bonds (Public Contract Code Sections 10314 and 12112):

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CMAS SERVICES GUIDE

SECTION 2 – ADMINISTRATIVE REQUIREMENTS, Continued

Bond Requirements (continued)

Not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the Contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the Contractor. See CMAS contract terms and conditions, Information Technology, General Terms and Conditions, CMAS Progress Payments/Performance Bonds.

Administrative Fee/Billing

The Department of General Services (DGS) will bill each state and local agency directly an administrative fee for use of CMAS contracts. This fee is waived for purchase orders to California certified small businesses. The fee exemption does not relieve the requirement to send a copy of the purchase order to the CMAS Unit. See DGS Price Book at www.dgs.ca.gov/publications (click on DGS Price Book) for current fees.

The Procurement Division will invoice state and local government agencies directly. The administrative fee is:

- Not included in the purchase order
- Not invoiced by the Contractor
- Not remitted by the agency before an invoice is received

The agency can ask the Contractor to pay the administrative fee (contractor may decline). In this case, the agency forwards the Procurement Division invoice to the Contractor and the Contractor issues a check to the Procurement Division for the invoice amount.

When the total of the agency purchase order is higher than the invoiced amount, the agency must issue an amendment to the purchase order to lower the total amount or DGS/PD will bill the administrative fee against the original higher total.

Reporting Requirements

Legislation requires that state agencies submit various reports on procurement practices.

See the Purchasing Authority Manual, Chapter 12, Reporting Requirements, for more information.

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SECTION 3 – AGENCY RESPONSIBILITIES

Contracting Expertise and Successful Results

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

It is the responsibility of the ordering agency to have sufficient procurement expertise and understanding of applicable codes, policies, and guidelines and the CMAS program parameters to ensure that transactions are legal and consistent with best business practices.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the state's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

Successful CMAS transactions are totally the responsibility of the ordering agency. Agency staff must possess sufficient knowledge of essential acquisition principles and practices to make appropriate purchasing decisions or risk loss of delegated authority to use the CMAS program.

Legal Counsel

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contract basis.

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SECTION 4 – ORDERING INSTRUCTIONS

Purchase Order Form

State agencies will use the STD. 65 Purchasing Authority Purchase Order form to procure services. The ordering procedures are described in each CMAS contract.

Local government agencies use their own purchase order forms and process them exactly like the STD. 65 Purchase Order form.

Statement of Work

Agencies statement of work must be incorporated into the purchase order.

Contract Number

Contracts for non-information technology services will start with a 4 and include a 03 in the third field. Example: 4-XX-03-XXXX.

Contracts for information technology services will start with a 3 and include various numbers in the third field. Example: 3-XX-XX-XXXX.

Non-Information Technology Services Exceeding \$50,000

State agency purchase orders (not applicable to local government agencies) for **non-information technology services** that exceed \$50,000 must be reviewed and approved by the Department of General Services, Procurement Division (DGS/PD) before issuance to the Contractor.

Once the purchase order is approved by DGS/PD, it will be stamped approved and signed by DGS/PD and returned to the agency for issuance to the Contractor.

Contractors are prohibited from accepting purchase orders without the DGS/PD stamp of approval and signature. Violation of this requirement may result in contract termination.

Agencies must send purchase orders that exceed \$50,000 to the following address for review and approval:

Department of General Services
Procurement Division, Technology Acquisition Section
707 Third Street, Second Floor
West Sacramento, CA 95605 IMS #Z-1

The following documents should be included with the purchase order:

- Solicitation document
 - Copies of all quotes received
 - Resumes
 - Evaluation documentation
 - Std. 215 (for the contracting-out justification)
 - Complete CMAS contract
-

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SECTION 4 – ORDERING INSTRUCTIONS, Continued

Resellers	Authorized CMAS resellers qualify as independent solicitation offers. That is, the agency can obtain the necessary offers from one CMAS contract with multiple resellers.
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Small Business	<p>Prior to placing purchase orders under the California Multiple Award Schedules program, state agencies shall whenever “practicable” first consider offers from small businesses and/or DVBE’s that have established CMAS contracts (Government Code Section 14846(b) (Executive Orders)).</p> <p>NOTE: The Department of General Services will request substantiation of compliance during a compliance review.</p>
<hr/>	
CMAS Transactions	CMAS transactions are not competitive bid transactions so small business preference, protest language, intents to award, evaluation criteria, advertising, etc. are not applicable. Ensure that the Contractor understands that your CMAS transaction is not a competitive bid.
<hr/>	
Multiple Contractors	Ideally, agencies will obtain all of their requirements from the same CMAS contractor because unlike the bid process each individual contractor is responsible “only” for their portion (whatever their individual purchase order specifies), not the total solution with everything completed and working together. Even if an agency hires a project manager, the project manager is responsible only for “project management.” Consequently, the agency is solely responsible for the successful integration of all components.
<hr/>	
Delivery	The <u>purchase order</u> must be issued before the CMAS contract end term. However, delivery of the products or completion of the services may be provided after the contract end term, but must be as provided for in the contract and as specified in the purchase order.
<hr/>	
Network Design Services	All network design services must result in a hardware or software solution. Also, all network design services performed by the Contractor that include infrastructure components must be performed by a BICSI certified Registered Communications Distribution Designer (RCDD) employed either by the Contractor or subcontractor. Evidence of RCDD certification may be required by the ordering agency.

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SECTION 5 – SMALL AND DISABLED VETERAN BUSINESSES AND AMERICANS WITH DISABILITIES (ADA)

Small and Disabled Veteran Business Participation

Two Executive Orders require that agencies contract with Small and Disabled Veteran Business Enterprises (S/DVBE) whenever practicable (Government Code Section 14846(b)). S/DVBE contractors are separately listed on the Procurement Division's web site (www.dgs.ca.gov/pd) click on CMAS).

NOTE: The Department of General Services will request substantiation of compliance with this requirement during a compliance review.

Administrative Fee Waived for Small Businesses

The Department of General Services, Procurement Division, is waiving the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for purchase orders awarded to certified small business enterprises.

Small/DVBE Business Subcontracting Participation

SMALL BUSINESS/DVBE – TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE SUBCONTRACTING

The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.

The Contractor will provide an ordering agency with the following information at the time the order is quoted:

1. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 2. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
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SECTION 5 – SMALL AND DISABLED VETERAN BUSINESSES AND AMERICANS WITH DISABILITIES (ADA), Continued

**Small/DVBE
Business
Subcontracting
Participation
(continued)**

- Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
- Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor from the quotation as outlined above.

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SECTION 6 – BEST VALUE DETERMINATION

**CMAS Program
Evaluation**

All CMAS transactions are based on best value criteria.

What is Best Value?

Evaluation and award may be based on best value, and not restricted to lowest cost. Best value is whatever the agency determines is critical to the success of their transaction or project. See Public Contract Code Section 12100.7 (g).

**Determining Best
Value**

To determine best value, the following minimum steps are required. The agency must:

- Define requirements (Statement of Work)
 - Obtain a copy of the contract from the Contractor
 - Review the contract in context with agency requirements and contractor offer
 - Compare contracts and offers with those from other contractors
-

Review Resumes

Before selecting a contractor, the agency must review the resumes of all contractor personnel to ensure that the expertise, education, and experience offered correlates with that specified in the CMAS contract.

Document Files

Best value decisions must be documented in the agency files.

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ATTACHMENT A – OUTSOURCING SERVICES

Overview	<p>Careful analysis must be given by state agencies to using contracted personnel rather than using civil service positions within state government.</p> <p>The State Constitution generally requires contracting to be limited to those services that cannot be performed by civil service employees except as provided for in Government Code 19130. Considerations are as follows:</p>
Cost Savings	<p>State Personnel Board (SPB) approval required. Any state agency proposing to execute a purchase order/contract based on cost savings to the State as justification for not using civil service personnel must first notify the State Personnel Board of its intention.</p>
When is Outsourcing Permissible?	<p>Issuing a CMAS purchase order for services is permissible when any of the conditions set forth in Government Code Section 19130(b) can be met:</p> <ul style="list-style-type: none">• Exempt under Constitution• New state function and legislative authority• Service not available; highly specialized or technical• Incidental to the purchase or lease• Conflict of interest; need unbiased findings• Emergency appointment• Private counsel, with Attorney General (AG) approval and Governor's Office, if applicable• Contractor will provide things that are not feasible for the State to provide.• Training when civil service is not available• Urgent, temporary, or occasional services when civil service delay would frustrate the purpose
Limited Service Hours	<p>Once the agency determines that outsourcing is permissible (see above list), there are two options to consider:</p> <p><u>Option 1</u> (Permissible Under Government Code 19130.b (3))</p> <p>CMAS orders for personal services such as project management, independent verification and validation, systems analysis and design are not limited to the number of hours or months per year that a consultant can work if the services contracted for are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system. Also, see the State Contracting Manual for additional information on Government Code, Section 19130, compliance.</p>

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CMAS SERVICES GUIDE

ATTACHMENT A – OUTSOURCING SERVICES, Continued

Limited Service Hours (continued)

Option 2 (Permissible Under Government Code 19130.b(10))

CMAS orders for services such as programmers, systems analysts, and technical specialists that are of an urgent, temporary, or occasional nature, such that hiring additional civil service positions is not feasible, are limited to nine months (1548 hours) per consultant within a twelve consecutive month period (See the California State Constitution, Article VII, Section 5)

This provision is per agency and is inclusive of orders issued on your behalf by another agency. Contractors must wait three (3) months from CMAS order termination/expiration before submitting the candidate's resume for work at the same agency/department.

Training

The Contractor may conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment (Government Code Section 19130.b (9)).

Management Memo (MM) 95-18

Government Code Section 19130(c) requires that all persons who provide services to the State under conditions that constitute an employment relationship shall, unless exempted by Article VII (Section 4) of the California Constitution, be retained under an appropriate civil service appointment.

Management Memo (MM) 95-18 provides the guidance necessary to make the required determination between employee status and independent contractor status and requires a certification about employee status and independent contractor status for each individual under contract.

Contract Reviews

Purchase orders for services awarded on the basis of Government Code 19130(b) are subject to review at the request of an employee organization representing state employees. The State Personnel Board further requires a written justification that includes specific and detailed factual information that demonstrates how the purchase order meets one or more of the conditions specified in Government Code Section 19130(b) (see www.spb.ca.gov).

Justification Required

For each purchase order, the agency must prepare and retain in file a written justification that includes specific and detailed factual information that demonstrates the purchase order meets one or more of the conditions set forth in Government Code Section 19130(b). The STD. 215 can be used for this purpose (do not transmit).

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CMAS SERVICES GUIDE

ATTACHMENT A – OUTSOURCING SERVICES, Continued

**Follow-on Contracts
Prohibited**

No person, firm, or subsidiary thereof who has been awarded a purchase order for consulting services, or a purchase order that includes a consulting component, may be awarded a purchase order for the provision of services, delivery of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the purchase order (Public Contract Code Section 10365.5).

Therefore, any consultant who develops a program study or provides formal recommendations is precluded from providing any work recommended in the program study or the formal recommendation.

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ATTACHMENT B – CONFLICT OF INTEREST

**Former or Current
State Employees**

State agencies need to determine whether the Contractor is or was a former or current state employee who is prohibited from contracting under the Public Contract Code Sections 10410–10411 or Government Code 87401 et seq.

**Consulting
Contracts**

State agencies must determine whether a consultant's proposed duties create any reporting requirements under the Political Reform Act.

Under some circumstances, consultants may be required to report economic interests; may be prohibited from receiving gifts; and/or may be disqualified from participating in certain decisions.

**Covered
Consultants**

Covered consultants may include:

- a. Individuals performing services with authority to:
 - Approve a rate, rule or regulation
 - Adopt or enforce a law
 - Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement
 - Authorize your agency to enter into, modify, or renew a purchase order provided it is the type of purchase order that requires agency approval
 - Either grant agency approval for a purchase order that requires your agency's approval and to which your agency is party; or grant approval for the specifications for such a purchase order
 - Grant agency approval to a plan, design, report, study, or similar item
 - Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision of the agency
 - b. Individuals who serve under purchase order, in a staff capacity with the agency and in that capacity participate in making a governmental decision as defined in 2 CCR 18702.2.
 - c. Individuals who perform the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's Conflict of Interest Code under Government Code Section 87302.
-

**Prohibited Financial
Interest**

Employees and certain consultants may be prohibited from participating in decisions or participating in "making purchase orders" if they have a financial interest. See Government Code Section 1090 et seq. and Government Code Section 87400 et seq.
